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SPEECHES

—

MR. CUSHING,

—

MASSACHUSETTS

STATE

MAINE BOUNDARY QUESTION.

NEWBURYPORT

BORNE AND BRAWATER

1839

MAINE BOUNDARY QUESTION.

HOUSE OF REPRESENTATIVES, }
MONDAY, February 25th, 1839. }

THE Message of the President of the United States being under consideration

Mr. CUSHING said that, in the present state of this business, he had but a very few remarks to make ; and in what he wished to say, he should endeavor to feel admonished of the extreme tenderness of the question, and of the critical position of the country.

He would not enter into the controversy between the United States and Great Britain in regard to the Northeastern boundary. He could not *condescend* to debate any further that point. The United States had already discussed it too long. Or, if there was to be any more discussion of that point, this House was not the place for it. This House had, in common with the Senate, unanimously adopted a resolution affirming, in the most ample terms, the territorial rights of Maine and Massachusetts, the resolution of the House being in the following emphatic words :

"RESOLVED, That after a careful examination and deliberate investigation of the whole controversy between the United States and Great Britain, relative to the Northeastern boundary of the former, the House of Representatives do not entertain a doubt of the entire practicability of running and marking that boundary in strict conformity with the stipulations of the definitive treaty of peace of seventeen hundred and eighty-three; and entertain a perfect conviction of the justice and validity of the title of the United States to the full extent of all the territory in dispute between the two powers."

With which resolution before us, he should consider it indecorous, and a needless waste of time, to re-open that question here before this House.

But I desire (said Mr. C.) to call the attention of gentlemen to the precise merits of the new and incidental question, which has grown up, that the true state of the facts may be understood in all quarters, misapprehensions corrected, and the responsibility for the result rest with Great Britain, where it justly belongs.

Neither the House nor the country, it seems to me, is fully alive to the delicacy of the relations of Great Britain and the United States at this moment. The Message, as suggested by the gentleman from Maine, (Mr. Evans,) does not, on the face of it, seem to indicate a full perception of

this, or come up to the apparent exigency ; though reasons of state may have called for and may justify some suppression in this respect on the part of the President.

But how stands the fact ? We have these threatening events in the Northeast, and these new pretensions of the colonial authorities of Great Britain, to show what is doing there. How is it in the North ? We have heard much of the success of a distinguished pacificator in restoring a peaceful state of things there ; but the fires of indignation along that whole line, which the misrule of Great Britain and the misconduct of the ruling party in Upper and Lower Canada have awakened, are smothered, not extinguished ; and it needs but the touch of a spark to rekindle them into a devouring flame, to spread like lightning from Maine to Michigan. In the Northwest we find Great Britain tampering with the Indians under our jurisdiction ; keeping them in her pay, subsidizing them, supplying them with munitions of war ; preparing them as of old to dash upon our frontier settlements, and to subject these anew to all the horrors of savage warfare. How is it in the West ? Is not the whole of the vast country in and beyond the Rocky Mountains intruded upon and usurped by the subjects of Great Britain ? And, as if the British Government did not mean that any part of the United States should want cause of offence against it, we find it striking a deadly stab at the dearest of the vital interests of the whole South.

Under these circumstances, while I deprecate angry collision on the Northeastern frontier, as deeply as any one can, yet I tell gentlemen it behooves them to overlook the whole ground. Unless this all-grasping spirit of universal encroachment on the part of Great Britain be arrested, either by moderation in her councils, or by fear, the time must and will come, when her power and ours cannot co-exist on the continent of North America. And I say this, that the House may duly appreciate the importance of the present contingency.

Now, in regard to this controversy, I shall exclude, so far as possible, all expression of the natural feelings of indignation which the pretension of Great Britain is fitted to awaken. That pretension is the monstrous one, that the treaty of peace of 1783 was a grant or concession by Great Britain to the United States ; that it was a deed of land from her to us, and wherever doubts arise concerning its import, the construction is to be in favor of the grantor ; and that we, the people of the United States, hold the soil on which we dwell, not by the colonization and settlement of it which our forefathers accomplished at their own hazard, nor by inheritance derived from that generation to the succeeding one, nor by the victories of the Revolution and by conquest on the field of battle, but by mere grant and concession from the favor of Great Britain. The same pretension she undertakes to apply to all the rights appertaining to the soil and sovereignty of the United States, such as the fisheries, and the navigation and use of the seas adjoining North America. So that, whenever Great Britain chooses to lay claim to any part of the United States, no matter how groundless and scandalous may be the claim, no matter if the tract of country she sets up a claim to, be and always have been occupied by us,—at that instant, on the mere setting up of the claim, her right as the ancient sovereign of the United States, is revived, and she is to be intended to be in the possession constructively of the country claimed, and though not in fact having the possession, is to be suffered to take possession of it, and to exercise exclusive jurisdiction over it until she may choose to give

up her claim ; converting us, the people of the United States, as the gentleman from Virginia, (Mr Wise,) truly suggests to me, into the mere tenants at will of Great Britain. That is the point on which this present controversy, this claim on the part of Great Britain to the exclusive possession of the Aroostook, hinges.

This position was, for the first time, asserted by Sir Charles Vaughn, in 1827, in a letter to Mr. Clay. The territory, he said, is *still in dispute*. "The sovereignty and jurisdiction over that country, have consequently remained with Great Britain, *it having been in the occupation and possession of the Crown previously to the conclusion of the treaty of 1783.*" Mr. Clay indignantly repudiated the idea that whatever territory in North America Great Britain claims, she is to be regarded as having occupation and possession of *constructively*, as the mother country, and demands that "the Government of New Brunswick should cease from the exercise of ALL AND EVERY ACT OF EXCLUSIVE JURISDICTION within the disputed territory, until the question of right is settled." Our Minister in Great Britain was instructed to meet and rebut this pretension in the most decisive terms.—He did so. It was attempted to be maintained by the Earl of Aberdeen in behalf of Great Britain, with the weapons of diplomatic chicanery and old mother country insolence, which belonged to such pretensions. For it is indeed a point impossible to be yielded by the United States. It is vital to our very independence. We might as well return to colonial vas-salage again at once, as give up the assertion of our coequal indepen-dence, and of the coequal rights of soil flowing from it, which is the fun-damental principle of the treaty of peace.

Now for the application of this principle. From 1783 to 1816, no mortal man heard of a claim of Great Britain covering the valley of the Aroos-took. The whole of the claim, indeed, to the disputed territory, so cal-led, is a progeny of the war of 1815. It is a belligerent device—the at-tempt to get possession of a tract of country lying between New Bruns-wick and Lower Canada. What is not hers by right, and what she could not obtain by conquest or purchase, she has endeavored to obtain by dip-lomacy. The claim itself is groundless and absurd ; but inaking the claim, she proceeds to claim the possession also, by virtue of the pre-tension I have stated. On no other ground can Sir John Harvey undertake to exercise jurisdiction on the Aroostook. The lands there are held un-der grants of Massachusetts or Maine, going back more than thirty years. The Governments of Massuchusetts and Maine have had jurisdiction there down to the present time, surveying the land, giving permits to cut tim-ber, removing the trespassers, and the like, just as upon lands within the undisputed limits of Maine. The exclusive jurisdiction of New Bruns-wick in this region has never been asserted and enforced as against Maine. For it is to be remembered that this dispute has happened *on the Aroostook*. The arrests of individual citizens of Maine, which have heretofore taken place, have been in the Madawaska country. The Madawaska is a nother-erly branch of the St. John's, the Aroostook a southerly one, and the val-ley of the latter is in the southernmost portion of the disputed territory, which the King of the Netherlands assigned to the United States. I sup-pose it is on this account that Great Britain has practi-ed more forbear-ance in regard to the Aroostook than the Madawaska, and in the former has refrained hitherto from the attempts to enforce exclusive jurisdiction which she has practised in the latter. At any rate, the House will admit Great Britain has no right of exclusive jurisdiction ; that her claim of right

is founded on a pretension utterly and palpably untenable ; that she has neither right of exclusive possession, nor exclusive possession in fact.

Has the Government of the United States made any agreement conferring on her the right (temporarily or otherwise) to the exclusive possession of the territory ? I shall not go back to cast reflections on the Government of the United States. It has, in my judgment, much atoned for past error by the decision of its present course. A new crisis has arrived. I stand upon the correspondence between Mr. Forsyth and Mr. Fox, to which this affair has given rise. Whatever misconception there may have been concerning this, on the part of any officers of the British Government, or in this country, there is, at any rate, no such agreement. England must now enter upon a new course of measures. She has not exercised hitherto exclusive or forcible jurisdiction on the Aroostook : she must now cease to claim the right to do so hereafter, under this pretended agreement, which the United States never made. And the conclusion to which I come on the whole is this : The understanding, actually had, has either been misconceived, or wilfully misrepresented, by the British authorities or officers in America. It does not seem even to have been so understood in England. At the very outset of the affair, in 1827, the proposal for an understanding, it appears, came from Mr. Canning, who "suggested the propriety of abstaining on both sides, pending the suit, from any act of sovereignty over the contested territory." Here is *the suggestion of the understanding*. And whatever statements of it occur in the correspondence of the subordinate functionaries of the two Governments from that time to this, I have a remarkable declaration, made by Lord Palmerston, the present Foreign Secretary, in a debate in the House of Commons, on the 24th April, 1837, as I find it reported in the London Times,

"Sir Robert Peel said : Is the Province of Maine in the occupation of any part of the disputed territory ?

"Lord Palmerston replied : The disputed territory, or at any rate the greater part of it is in our occupation at present, upon the understanding that neither we, nor any other party, shall exercise any of the rights belonging to permanent territorial sovereignty.

"Sir R. Peel : I do not see how any arrangement of that sort can be made. The land must be occupied by one party or the other. Is it occupied entirely by British subjects ?

"Lord Palmerston : It is not settled at all at present ; it is occupied by vast forests of wood, and it is understood that neither party is to cut the wood until the differences are settled in one way or the other."

These two declarations are each very different from that of Sir John Harvey, who undertakes an assertion by force of exclusive jurisdiction, not only unsupported by, but in direct opposition to, the declaration of Lord Palmerston. In resisting this pretension of Sir John Harvey, the Government of Maine is right, as he is wholly wrong in making the pretension. It is a pretension which cannot and will not be tolerated in the United States.

In regard to the conduct of the Government of Maine, there is one important consideration to be borne in mind.—There is a question of State rights at the bottom of this. I have heard it questioned whether Maine had any *constitutional power* to do what she has done. Such is not my reading of the Constitution. Each State has an indefeasible right to the integrity of her own territory, which the United States cannot curtail but with her consent. Each State has an indefeasible right to defend that integrity in arms, if need be, by her own force, if that of the United States

be not at hand. Struck, she must and should strike. Such is the sacred right of self-preservation, sanctified by the great charter of the Union, and by the first principles of human action, which are superior to all the Constitutions on earth. The Constitution contains the following clause :—

"No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State or with a foreign power, or engage in war unless actually invaded, or in such imminent danger as will not admit of delay."

I shall not inquire whether the Governor and Legislature of Maine did or did not stir in the best possible manner. That is a question passed. The wheel of time has rolled over it, and, in the progress of events, we have reached another and a graver issue. Sir John Harvey is in the act of invading the State of Maine, and invading it under pretensions which neither the peace nor the honor of the United States can tamely endure. The State of Maine possesses, under these circumstances, full constitutional power to arm in her own defence, and to withstand and repel hostile invasion. The power is expressly given to her by the Constitution; and herein, at least, the law is not silent amid the din of arms. She had the power; and she has judged, as she might and must, whether or not the exigency had arrived for the exercise of the power; and, having armed herself, has invoked the aid of the Federal Government in defence of the integrity of her own soil and that of the United States.

Of the part which it now becomes the duty of Congress to perform, I shall say nothing at present, because I do not wish to anticipate or pre-judge the action either of the Committee on Foreign Affairs or of the House.

HOUSE OF REPRESENTATIVES, }
SATURDAY, March 2d, 1839. }

THE House having resolved itself into Committee of the Whole on the state of the Union (Mr. Lincoln in the chair) on the bill reported by the Committee on Foreign Relations—

Mr. CUSHING obtained the floor, and, after yielding it for some explanations made by Mr. Saltonstall, Mr. C. referred to his wish and endeavor the last evening to bring before the House the resolves on this subject just reported in the Legislature of Massachusetts, and proceeded to say that his chief object in rising at the present time was to discuss the precise merits of the measure under consideration, and to defend the views of the Committee on Foreign Affairs; and then addressed the House, in substance, to the following effect.

Without dwelling, said Mr. C. on my personal relations to this question, I desire to state here, what indeed is already notorious to every body, that it is my fixed determination to stand by the State of Maine and the Government of the United States in the positions they have respectively assumed, at whatever hazard to myself. If the pretensions of Great Britain should unhappily force the United States into war, I shall not stop to dispute which of the two, my native land or its foreign enemy, is in the

right ; but I will be found in the tented field, where death is to be met, or honor won, at the cannon's mouth.

But I do not believe that the calamitous issue of war between the United States and Great Britain is to follow, now at least, immediately, upon the events which have taken place in Maine. I hope and trust that Sir John Harvey will not dare to attempt the execution of the menace he has uttered, to invade the United States upon the false pretence of the right of G. Britain to the exclusive jurisdiction and possession of the Aroostook. I hope and trust that he will pause over the crisis his rashness has brought on ; that he will hearken to the counsels of prudence which go to him from the Minister of his Government here, and that he and his arrogant pretensions will be disavowed by that Government, in view of the storm of indignation they have aroused in the United States.

At the same time, I disagree with those who would make light of these events, and who think it neither a grave nor a perilous contingency, when the Governor of New Brunswick threatens to march his foreign mercenaries into the State of Maine, and that State is in arms as one man, and clad in all the panoply of war, to repel the invader and defend her soil from desecration. Whether there shall be war or not, depends not on us, but others ; which renders it the right and the duty of the United States to take such an attitude as will show to the world, that while anxious to avoid war, if it may be with honor, we have no such dread of Great Britain, or any other Power, as to truckle to it for the sake of a peace to be purchased with ignominy. Peace, indeed, thus obtained, would be the worst of disasters to the whole country ; since it would be a perpetual invitation to the aggression and insult of foreign states, and would leave to us nothing of independence but the name.

Sir, it is my most anxious desire to shun each of these alternatives, both war and all its calamitous consequences, and peace bought with the degradation of the nation. It has been most injuriously imputed to me that I am unfriendly to Great Britain, because I have, on this question, and on other questions existing between the United States and Great Britain, withheld the unjust claims of the latter, and exposed the tendency to encroach on us, and to aggrandize herself at our expense, which marks her policy in North America. These things, it is true, I have done ; but I have done them not from unfriendliness to Great Britain, but in the discharge of a solemn duty towards my own country. If I perceive the United States the subject of aggression in various quarters, must I conceal it ? May I not speak out ? Shall it be suffered to go on, year after year, unrebuted ? May not an American Representative, here, in the halls of our own Congress, raise his warning voice to the People, that they may interpose betimes and arrest the progress of injury ? Are we to be perpetually engaged in the domestic conflicts of party, and never to look at the foreign relations of the country ? Not so. This very question proves how wrong it is to allow such things to fall into neglect. And if I have labored to fix the attention of Congress and the country upon particular acts of Great Britain, injurious to the United States, I have not, either in language or in fact, exceeded the zeal which is every day manifested among ourselves, when the interest of one of the States of the Union comes in conflict with that of another, or of the United States.

One thing more in this relation. After the full explanations just made by my colleague (Mr. Saltonstall,) I have not a word to say in regard to the general tenor of his remarks last evening. But there is an observa-

tion of his, which I must controvert, in order that this debate may transmit to future times a just idea of all the facts involved in it. I cannot concur in his approbation of the character of Sir John Harvey, as gathered from the documents before us. He may be a meritorious and gallant officer, for aught I know to the contrary; and such is the testimony concerning him of distinguished officers of our own army, who were opposed to him in the campaigns of Upper Canada during the last war with Great Britain. But the conduct of Sir John Harvey in the late events, as apparent in the documents before us, I feel bound in justice to the States of Maine and Massachusetts to say, is in my estimation any thing but honorable to him.

Sir John Harvey stands self-convicted, upon his own showing, in the first place, of gross and culpable neglect of duty in regard to the trespasses upon the disputed territory, which were the immediate cause of the troubles there; and it may well be questioned whether he did not designedly connive at them, either on account of the profit the people of New Brunswick were deriving therefrom, or in order to strip the land, and thus reduce the value of the thing in dispute. Great Britain arrogates to herself the wardenship of the disputed territory. She undertakes to prevent trespasses upon it. Has Sir John Harvey done this? On the contrary, it was the fact, of the territory being overrun with depredators, which wearied out the patience of Maine, and caused her Government to send a sheriff with his posse, to put an end to the strip and waste of the land. Had Sir John Harvey taken any measures to prevent the trespasses? Far from it. In his communication to Governor Fairfield of the 13th of February, the very letter in which he pretends that the territory, which is in dispute, "shall remain in the exclusive possession and jurisdiction of England until that claim shall be determined;" and in which he says that "my instructions do not permit me to suffer any interference with that possession and jurisdiction, until the question of right shall have been finally decided"—in this letter, what does he say in regard to the trespasses, which, upon the assumed premises, it was his duty to prevent? "I have given directions for a boom to be placed across the mouth of the Aroostook, where the seizing officer, protected by a sufficient guard, will be able to prevent the passage of any timber into the St. John in the spring." Why did he not place a boom there before? Besides, the mouth of the Aroostook is in the Province of New Brunswick. The States of Maine and Massachusetts do not wish to have the timber wasted by depredators. They do not wish to have it sold, and the proceeds held by Great Britain. Sir John Harvey should have taken care that the trespasses were not committed, as he might have done if he had chosen, the supplies of the trespassers being obtained in New Brunswick, as well as the timber carried there for sale. And yet, in another communication to Governor Fairfield, that of the 18th of February, he says:

"I beg leave to assure you that the extent to which those trespasses appear to have been carried, as brought to my knowledge by recent occurrences, will lead me to adopt, without any delay, the strongest and most effectual measures, which may be in my power, for putting a stop to and preventing the recurrence of such trespasses."

Here is not only a distinct admission of the magnitude of the trespasses, and of the necessity of arresting them, but of his total neglect of the subject, if he had not wilfully shut his eyes to what could not possibly es-

cape his notice if he had chosen to look. Does such conduct as this entitle Sir John Harvey to commendation?

But I have a more serious charge to bring against the Governor of New Brunswick. What is the spectacle now before us? We see the State of Maine in martial array. Her militia have been summoned to the field by thousands. She has flung out her banner to the wind. Her young men are marching to the frontier; her old are gathering munitions of war and taking counsel for the public defence; and the whole population of the State, with unanimity unexampled, has risen up *en masse*, for the defence of her rights and their honor. Meanwhile, alarm pervades the country. The Government of the United States has been invoked to the aid of Maine. Congress and the Executive are absorbed in the consideration of the question. Irritations have been roused between the People of the United States and Great Britain. A flame has been kindled, which, it may be, blood only can quench. War,—war between two nations allied in blood and in interest,—which, if it should break forth, would have many of the features of civil war,—may be the lamentable consequence. Whose fault is this? To whom is the immediate blame imputable? To Sir John Harvey, and Sir John Harvey alone. If, as he pretends, the custody of the disputed territory belonged to him, he should have prevented the trespasses; and the omission to do that is the first fault. But he is, above all, to be blamed for the near approach of the country to war, because of the arrogant pretensions and gasconading threats in his communication of the 13th of February. It was the claim on his part to the exclusive possession and jurisdiction of the Aroostook, and his menace to invade the State of Maine in the assertion of that claim, which summoned her people to arms. I cannot follow those who censure the Governor and the Legislature of Maine for undertaking to drive off the trespassers, or for the language and acts of indignation which the subsequent menace of Sir John Harvey occasioned. These were the acts of the whole people of Maine. They are approved in the resolves of the State of Massachusetts produced here last evening. On the other hand, Sir John Harvey's pretensions have been promptly repudiated and denied by the Government of the United States. But, above all, he has been pointedly condemned and disavowed in advance, by the British Minister, in the *Memoranda*, signed by him and the Secretary of State, in which Sir John Harvey is expressly told to stop, and is impliedly told that he has exceeded his instructions, and will be disavowed by his Government. Under these circumstances, Sir John Harvey, it seems to me, deserves unmitigated censure for the part he has played in the recent transactions.

Now, for the merits of the bill before the Committee. It has been discussed as a war-measure. Such is not my view of it. I regard it as a peace measure. If it contains provisions implying preparations for war, it also contains provisions which make a tender of peace. We hold to Great Britain the olive-branch of peace in one hand, though in the other gleams the thunderbolt of war. But, in fact, all its provisions are pacific, because they are provisions of mere self-defence in case of attack. There is nothing aggressive in them. We have been threatened with invasion. We have been threatened with invasion, coupled with pretensions the most odious and unbearable which can be addressed to a free People. If Great Britain undertakes to execute these threats, if she actually invades the

United States, then, but not otherwise, the President has authority by the bill to array the physical force of the country to resist and repel such invasion.

This is the principle of the bill, as set forth in the first section; which section, instead of enlarging the power already possessed by the President to repel invasion,—to do which, he may by the act of 1795 call into the field any number of men,—in fact restricts that power, by specifying the particular assailant against which, and the precise circumstances under which, this section of the bill is to have effect.

Objections have been made to the second section, because it provides for the enlistment of regular troops, in case of invasion before the next Congress can be convened. Whether this kind of force, or volunteers, should be authorized, is a question of economy and expediency, of which it is for the House to judge.

No objection seems to have been made to the section which places the whole naval force of the country in commission; which is, indeed, small enough for the present exigencies of the country.

Nor can the contingent appropriation proposed in the bill be refused, and mere resolutions expressive of the general opinion of the House be adopted as a substitute of the bill, in the manner proposed by the gentleman from Virginia, (Mr. Wise,) without rendering the whole measure futile and of no avail.

But, independently of these questions, a general objection has been taken to the measure by the gentleman from Pennsylvania, (Mr. Biddle,) and more especially to the ground assumed by the bill, of resistance to any attempt, on the part of Great Britain, to enforce, by arms, her claim to the exclusive possession and jurisdiction of the disputed territory in Maine.

This, it is true, is an incidental issue,—the claim of Great Britain, or of Sir John Harvey, to the exclusive possession of the disputed territory,—and so far differs from the main issue, that of the ultimate right to the territory. The gentleman from Pennsylvania has done full justice to the latter question, and has declared, in decisive terms, his conviction of the immovable right of the United States, and of the futility of the claim of Great Britain to the territory in dispute. Such, indeed, is the declared opinion of every other gentleman, who has addressed the House on the subject. And, if the question of peace or war stood on the main point, there could, I presume, be but one sentiment in Congress and the country as to the duty of the United States to defend, at all risks, the rights of Maine and Massachusetts. But is it safe or wise to take issue on this incidental point, of the controverted right of possession *ad interim*, pending the negociation as to the ultimate right of sovereignty? That is the question.

In the first place, it is to be remembered, that when there is a controversy of long standing between two nations, the immediate cause of war is very likely to be some subordinate fact, happening in the progress of the controversy. That is one of the evil consequences attending the protracted discussion of conflicting international claims. The parties become embittered on both sides. They are each prone to regard the acts of the other with jealousy and suspicion. Their peace depends, not so much on the original merits of the diplomatic question between them as on the accidents of daily collision.

And this consideration affords an answer to the suggestion made out of

doors,—not, I believe, in this debate,—of the inconvenience of having the peace of the whole United States subject to be put to hazard by the excess of zeal of any one of the States, whose interest is more immediately affected by some pending national controversy. I do not admit that, thus far, the State of Maine has done wrong, or exceeded its constitutional powers in this matter. And to the practical inconvenience here suggested, my reply is, that it exists in all such cases; and where two nations have a grave question of long duration between them, they are always liable to be involved in war by the acts of individuals, or of inferior officers, military or civil, or, as here, of a single State, by reason of incidental difficulties growing up out of the main one, for which the whole country is and must be responsible, though its Government may not have been the immediate party. This inconvenience is not peculiar to the United States, or imputable altogether to the separate action of either of the States.

Secondly, supposing this incidental issue to be less favorable to us than the main one, that is our misfortune, not our fault. Who raised this issue? The United States or the State of Maine? By no means. The State of Maine did that which it had a lawful right to do; it sent a posse to the Aroostook to drive away the trespassers. Thereupon, Sir John Harvey, in the spirit of arrogance common to military governors of remote Colonies, sets up the claim of New Brunswick to the exclusive possession of the territory in dispute, and marches his troops to invade the United States. The State of Maine resists this claim to exclusive possession; the United States resist it. They must do this; they have no alternative left them but resistance to a false claim, or a tame acquiescence in it, which would be disgraceful to the U. States, and would but prompt the continued aggression of Great Britain. And if Sir John Harvey proceeds to execute his threat, and to march his troops into Maine, that State would be recreant to herself, if she did not master to the defence of her soil; and the Federal Government would be false to its obvious and imperative constitutional duty, if it did not prepare also to back the State of Maine in the defence of her soil, which is at the same time the soil of the United States.

We do not propose, by this bill, any act of aggression against Great Britain upon this incidental point. Still less do we undertake, by aggression in regard to this point, to bring on a resort to arms to enforce a settlement of the main point. The bill is purely a defensive measure. And we have no choice in this matter. We must, of necessity, withstand aggression in the thing, and upon the issue, presented to us by the aggressor. And if Sir John Harvey presumes to invade the State of Maine in the assertion of this claim, and he is upheld in this by his Government, the fact that it is an incidental question, or that the right in it is less incontrovertibly with us than upon the main question, will, in no sort, weaken the strength of our cause in regard to that, which, after all, would be the true ground of hostilities,—namely, the unfounded and iniquitous claim on the part of Great Britain to the ultimate sovereignty of one third of the State of Maine, a claim which is denounced and repudiated by us on all hands.

But is this an issue unsafe or unwise to be joined by the United States? I cannot admit that it is.

To begin, the question of possession is one which from its nature is peculiarly intelligible to every body, while that is not the fact as to the question of right. To understand the question of right fully, it needs to ex-

amine a vast body of documentary matter, in which the proofs are contained; it needs to read and study the treatises and diplomatic correspondence between the two Governments; it needs to throw off the mass of chicanery, and of disengenuous pretension, and of perversion of fact and argument, under which the ministers and agents of Great Britain have succeeded in burying the simple merits of the case; it needs to seize a complex question, and to be master of it in all its parts, and its general whole. Not so in regard to the question now pending,—whether the United States will repel invasion undertaken by Great Britain while the right is in controversy. That is the familiar case of a trespass committed on my land by a grasping neighbor. Whether he can make out a good title in law, and oust me by the judgment of a competent tribunal, is a thing, requiring perhaps, much discussion, and by wise and learned men, before it can be properly determined. But if, pending the suit, he enters my close, and undertakes to drive me out, and hold exclusive possession of it, regardless of all the presumptions of right, that is an act of aggression, which every body understands at a glance, and which would justify me in repelling force with force. And that is the issue, plain, intelligible, practical, which Sir John Harvey has presented to the State of Maine, and which the Executive has met in the documents before us, and which Congress is called upon to meet in the first section of the bill reported by the Committee on Foreign Affairs.

That Great Britain has no such *right of possession* unless conferred on her by express agreement of the United States, is admitted by every one, because the assumed ground of right is the odious pretension, which I had occasion to comment upon a few days since, that whenever Great Britain chooses to lay claim to any part of the United States, she is thereupon to be taken and intended as being constructively in possession of the part so claimed, in virtue of her being mother country and former sovereign of the country; and as such to enter upon the exclusive jurisdiction of it until the claim be settled. Such a claim of right, arrogant and intolerable as it is, no citizen of the United States will deign to listen to or entertain for a moment.

Has Great Britain ever, in fact, had the exclusive possession and jurisdiction of the territory in dispute? Never. Whatever rights she may have claimed, whatever acts she may have performed, in the valley of the Aroostook, certain it is that acts have been continually performed by the States of Massachusetts and Maine wholly incompatible with the supposition of the practical exercise of exclusive jurisdiction on the part of Great Britain. It may be that McLauchlan, the British warden, has seized timber there; but neither he, nor any body else from New Brunswick, has ever, before the late affair, undertaken to seize men who acted for and represented the State of Maine. All such arrests have taken place in the Madawaska country. It may be that McLauchlan has protested *on paper* against acts of sovereignty performed by the State of Maine, as in the case cited last evening by my colleague, (Mr. Saltonstall.) But what does this amount to? Does it make out a case of the practical exercise of exclusive jurisdiction? Far from it. It is only one side of the case. To show a claim to jurisdiction on paper, or even isolated acts of jurisdiction, goes a very little way towards proving in behalf of Great Britain the practical fact of exclusive jurisdiction and possession. To understand the whole case, we must look into the acts of Maine and Massachusetts,

Now, it is truly stated in the report of the Committee on Foreign Affairs, that, in pursuance of a resolve passed in 1806, Massachusetts, in 1807, granted a township on the Aroostook, near to the meridian line which divides Maine and New Brunswick; and in 1808 ten thousand acres west of the former, after surveys and plans. I refer to these old grants to show that the exercise of sovereignty on our part is no recent thing. This, and what has been done since by one State or the other, is stated generally by Governor Fairfield as follows:

"In reply, I have to say, that the territory bordering on the Aroostook river has always been, as I regard the facts, in the possession and under the jurisdiction of Massachusetts and Maine; that, more than thirty years ago, Massachusetts surveyed and granted large tracts of it, which have ever since, in some way, been possessed by the grantees, and those claiming under them; that the rest of it was surveyed by, and some of it divided between Massachusetts and Maine, soon after the latter became an independent State; that both States have long been in the habit of granting permits to cut timber there without being molested from any quarter; that many persons have purchased these lands of Maine, and entered into their actual occupation; and that, in various other ways, Maine has exercised a jurisdiction, which may fairly be regarded as exclusive, over this territory."

In confirmation of all which, I have before me the last report of the land agent of Massachusetts, giving an account of the construction of a road to the Aroostook at the joint expense of Maine and Massachusetts, and detailing many particulars of the acts performed by him in arresting trespasses on the disputed territory. I have also the report of the land agent of Maine referring to the same facts, and stating the arrest of sundry trespassers by his order last year, and by *regular civil process* returnable at Bangor. And the same report contains the following conclusive fact:

"Near the mouth of the Little Madawaska, I met Captain McLauchlin going up the Aroostook with six men. Captain McLauchlin informed me that he was sent up by the Governor to cut up the timber, and take off the teams of the trespassers, if he could in no other way break them up. I informed him what I had done; he said he was glad, and would most cheerfully co-operate with the land agents of Maine and Massachusetts in stopping the trespassers".

Here we have McLauchlan himself offering no claim to exclusive jurisdiction, making no complaint of the acts of jurisdiction performed by Massachusetts and Maine, but on the contrary, commanding their acts, and pledging himself to cheerfully co-operate with their land agents. I have also before me the report of a recent geological survey of this tract of country, made by the State of Maine; it being a limestone region, of great value for the cultivation of wheat, and on that account attractive to settlers. These documents show, moreover, that Maine was under no obligation to give notice to Sir John Harvey of her late movement for the arrest or expulsion of the trespassers, and committed no breach of courtesy or of right in omitting such notice. And whether or no the facts amount to proof that Maine has had the exclusive jurisdiction and possession of the Aroostook,—which is not the question,—they do at any rate absolutely exclude the conclusion claimed by Great Britain.

It is impossible, therefore, that the Legislature of Massachusetts, in passing the resolves of 1836, which complain of the surrender of the possession of the disputed territory by the United States Government, as cited by the gentleman from Pennsylvania. (Mr. Biddle,) and my colleague, (Mr. Saltonstall,) could have meant to say that Great Britain did in fact exercise exclusive possession on the Aroostook. They could not have

meant this, because they knew it was not so. They had the acts of each State before them to show the contrary. The particular *inducement* of the resolves was undoubtedly the acquiescence of the Government of the United States,—a culpable acquiescence, I think,—in the acts of forcible jurisdiction performed by the authorities of New Brunswick in the Madawaska country ; and the particular *object* of the resolves was to put an end to the separate wardenship of that country, assumed by Great Britain without formal notice to the United States, and not resisted as it should have been when made known incidentally to our Government. It was indeed, a subject, the diplomatic relations of which were at that time involved in doubt, in consequence of the procrastinations and other errors which our Government had suffered in the management of the negotiation ; as I well know from having had occasion, at that period, to address a series of printed letters on the subject to the Governor of Massachusetts, as the means of replacing the facts in the public mind, and recalling them to general attention.

Whatever room for misconception the particular phraseology of those resolves may afford, there can be no doubt now as to the present views either of Massachusetts or Maine. The resolves just reported by a joint committee of the Legislature of Massachusetts are in the following clear and emphatic words :

COMMONWEALTH OF MASSACHUSETTS, 1839.

Resolves concerning the Northeastern Boundary.

Resolved, That the present state of affairs in relation to the Northeastern Boundary, as communicated to the Executive of this Commonwealth by the Governor of the State of Maine furnishes a strong reason for again asserting our rights, and for re-affirming the positions heretofore assumed by the Legislature of this State against the nnwarrantable claims of Great Britain, and in favor of strong and vigorous measures by the Government of the United States for a speedy adjustment of the existing difficulties, in such a manne as shall protect Massachusetts and Maine in the possession of the large tract of territory guaranteed to them by the treaty of peace of 1783.

Resolved, That the active measures authorized by a resolve of the Legislature of the State of Maine, passed January 24, 1839, for the prevention of depredations upon the lands of Massachusetts and Maine, were required by the exigencies of the case, and a wise regard for the preservation of their interests in those lands, and were similar in character to measures adopted by the land agents of Massachusetts and Maine in October last, and recognized and approved, through their agent, by the Government of the Province of New Brunswick.

Resolved, That the claim by Great Britain to the exclusive jurisdiction of the whole of the disputed territory, as recently asserted by the Lieutenant Governor of New Brunswick, and his avowal of a determination to sustain that claim by a military force, and his denial of the right of the State of Maine to protect from the lawless depredations of trespassers the lands which have long been held in the actual possession of Massachusetts and Maine, call loudly for the immediate interference of the Federal Government ; and that the crisis has now arrived, when the honor of the nation demands the adoption of decisive measures for the protection of her citizens, and for the preservation of the rights and interests of two of the members of our Confederacy.

Resolved, That this Commonwealth will co-operate with the State of Maine in all constitutional measures for the preservation of the interests of both States in the lands in the disputed territory, and for the speedy adjustment of the existing controversy.

Resolved, That his Excellency the Governor be requested to transmit a copy of these resolutions to the Executive of the United States and of Maine, and to each of our Senators and Representatives in Congress.

These resolves, and especially the second and third, cover the whole ground of the questions raised in this House.

Neither the general right of jurisdiction, nor the practical fact of possession being in Great Britain, it only remains to consider whether she

has a temporary right of possession by agreement of the United States. This our Government positively denies. It challenges investigation of all the correspondence between the two Governments as the conclusive means of settling the question. Instead of putting his hand on the pretended agreement,—which he could readily do if it existed,—Mr. Fox contents himself with protesting against the denial of it which Mr. Forsyth had made, and refers the point to his Government. Nay, further, he proceeds to negotiate a sort of informal convention with Mr. Forsyth for stopping the threatened movement of Sir John Harvey. Certain it is that no such agreement exists.

Whether the proposals made on the one side and accepted on the other, or the acts or omissions of our Government, were such as to justify misconstruction on the part of Great Britain; and what is the true construction of those proposals, acts, and omissions, is a question which I will not presume to enter upon, after it has been so fully discussed by the gentleman from Maine (Mr. Evans :) observing, only, that Great Britain might as well misunderstand, or fall into delusions concerning, any clause of treaty between us, as this agreement ; that we are not to suffer for the errors she may commit in this way ; and that the attempt, on the part of Great Britain, to enlarge the actual agreement beyond the obvious import of the words, or to set up, instead of it, another agreement which was never made, only tends, it seems to me, to aggravate the injury of her whole conduct in this matter, and to give to the United States additional cause of complaint.

For there is not, never was, and cannot be, any reasonable doubt as to the respective rights of the parties, nor more especially as to this particular point. What right has the Province of New Brunswick to interfere in this matter at all ? I have before me a copy I procured some time since of a map, entitled "Map of the British Possessions in North America, compiled from documents in the Colonial Department," and on the bottom of it purporting that it was "ordered by the House of Commons to be printed, 29th of June, 1827." It is contained in a volume of the Parliamentary Papers for that year. On it is the meridian line, which divides Maine from New Brunswick, running due north, from the source of the St. Croix, thence to the St. John, crossing the St. John, and proceeding north to the head of the Ristigouche. This line leaves the whole of the disputed territory west of New Brunswick, and out of the limits of that Province. It even carries the northwest angle of Nova Scotia to the north of the St. John, as we say it should go, and nearly to the point to which we claim. Such is the representation which the Colonial Department itself gives of the boundaries of New Brunswick ; which is confirmed by the curious fact that the commission granted to the Earl of Durham as Governor General of New Brunswick, in 1838, which I find in the public papers, describes that Province in correspondence with the map referred to, and, indeed, just as we have always contended it should be described. Now, I demand what right the authorities of New Brunswick have to cross the meridian line, which every book, map, and commission, which I have ever seen, like these now before me, lays down as the western limit of that Province ? There is but one answer to be given to this question. Great Britain has been *dishonest* in the matter. She prefers a claim to part of the State of Maine, to which she knows in her own conscience she has not a shadow of rightful pretension. If her construction of the Treaty of Peace be

correct, the Aroostook is in Lower Canada. But the line of Lower Canada as now and ever defined by Great Britain, is near to where we also say it is. And so is the western as well as the southern line of New Brunswick. In fact, this claim is contradicted by so many of her own acts, that the advocacy of it involves her in a labyrinth of deceit and falsehood. She cannot print a map touching the disputed territory, she cannot issue a commission, even at this day, which shall not give the lie direct to this groundless and unjust claim,—a claim as dishonorable to her as it is insulting to the United States.

There is but one other topic involved in this measure upon which I desire to be heard at this time. The Committee of Foreign Affairs have proposed an appropriation for a special embassy to England. They have done this to manifest the indisposition of the United States to go to war, if it may be honorably avoided, and the willingness of Congress, provided Sir John Harvey shall abstain from any aggressive acts in the mean time, to try once more the effect of negociation, before drawing the sword in defence of the rights of Maine. But I desire to say that, in assenting to this feature of the bill, I did not, and do not, mean to be understood as holding out any encouragement to Great Britain that this controversy is to be kept open by renewal of the evasive and fruitless negociations of the last ten years. No more delays,—no more procratination,—no more of the diplomatic chicanery, by which Great Britain has so long sought to obtain from the United States by manœuvre what is not hers by any just right, and what she cannot extort by force. When the question was first started by her, it was in the shape of an offer to buy of us this territory. Thus it stood at Ghent. She did not pretend, at that time, that it belonged to her under the Treaty of Paris. Next we heard of it as a thing of doubt and question merely, to be made the subject of negociation and investigation. Then it was magnified into a positive claim of ultimate sovereignty, and a *claim* of immediate possession by revival of mother country jurisdiction. Next it becomes an assertion of *actual* possession. Finally, through one stage of encroachment after another, that which in the outset was merely an expression of the wish of Great Britain to purchase this territory, because it was convenient and desirable to her, has swollen into an attempt to enforce by arms a pretended right of sovereignty and ownership coupled with exclusive possession and jurisdiction in anticipation of the settlement of the question of title. It is time to put a stop once and forever to this career of encroachments. I would have the President, if in the exercise of his Executive discretion he sees fit to send a special minister to Great Britain, to send a minister who will speak to that country in the language of decision and firmness concerning the present attitude of the United States. I would have that minister say to Lord Palmerston, in such phrases of diplomatic courtesy as he may choose to employ, but so there shall be no mistake as to the meaning:—“Sir, this thing has gone on long enough. Great Britain does not possess one jot or tittle of right to the territory in Maine she claims. Such is the opinion of the President; such is the unanimous opinion of both Houses of Congress; such is the opinion of the whole people of the United States. This claim, set up on the part of Great Britain in the spirit of encroachment which distinguishes her acts on this Continent, and pursued by contrivances and pretexts which are so signally dishonest that they would consign a private individual to disgrace, *must be relinquished*. The affair has reached a crisis ir-

reconcilable with the continuance of your pretensions, and the continuance of amicable relations. The United States are devoted to peace, and deprecate the calamities of war, and especially a war between them and a people allied to them by blood, and by all the ties of a close and beneficial intercourse ; but they cannot and will not submit to have Great Britain presume that she may seize, at will, upon the territory of the Union. Be not self-deceived. This is the true state of the question between us ; and on you who raised and have persisted in it,—on you, in the face of God and of man, does the responsibility for the issues of the question rest."

Sir, I shall detain the House no longer ; and, in conclusion, I have only to add that, as a member of the Committee on Foreign Affairs, I cordially approve of the able report of the chairman in all its parts, and shall continue to give all the support in my power to the provisions of public defence here presented to Congress, and the measures which it may devolve on the Executive to adopt in vindication of the rights of the United States.





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